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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,541	01/28/2002	Reinhard Holste	2611 US	3724

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EXAMINER
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LISH, PETER J

ART UNIT	PAPER NUMBER
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1754

DATE MAILED: 05/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/058,541

Applicant(s)

HOLSTE ET AL.

Examiner

Peter J Lish

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION*****Response to Arguments***

Applicant's arguments filed 3/5/04 have been fully considered but they are not persuasive. Applicant argues that the present invention teaches the removal of metallic mercury in addition to the removal of ionic mercury, whereas the prior art applied in the rejections of the previous office action does not teach the removal of metallic mercury. First it is noted the applicant's arguments rely upon the assumption that the hydrogen sulfide used in Miller et al. does not inherently remove any metallic mercury. No evidence is shown that hydrogen sulfide fails to remove any metallic mercury, while elemental sulfur (to which the hydrogen sulfide breaks down in the reaction) removes the metallic mercury. It is expected that the hydrogen sulfide of Miller et al. does at least partially remove the metallic mercury.

Second, the combination of Watson et al. with Miller et al. teaches the supply of a gas containing both hydrogen sulfide and elemental sulfur. As stated by the examiner in the rejection, the elemental sulfur inherently reacts with the mercury to form mercury sulfide, as is known in the art; See previously applied reference to Rosenthal et al., US 6,214,304. It therefore would have been obvious to use the hydrogen sulfide and elemental sulfur containing gas product of Watson et al. in the process of Miller et al. to remove mercury for the reasons stated in the previous office action. While Miller et al. may not contemplate the introduction of elemental sulfur, Miller et al. does not teach away from the use of a hydrogen sulfide gas that also contains elemental sulfur.

Applicant additionally argues that because Miller et al. does not note the removal of metallic mercury, there exists no motivation to modify the process to include additional steps to

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remove the metallic mercury. However, no additional steps are seen to be necessary, and no additional steps are claimed.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 112***

Claims 14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to how hydrogen sulfide reacts with hydrogen to produce the gas "G".

#### ***Claim Rejections - 35 USC § 103***

Claims 1-12 and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watson et al. (US 3,653,833) taken with Miller et al. (US 4,044,098).

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The rejection of the previous office action is maintained in its entirety and incorporated herein by reference.

Regarding claim 14, Miller et al do not explicitly teach the recycle of part of the flue gas containing unreacted sulfur dioxide, hydrogen sulfide, or COS back to the catalyzer. However, Miller et al. teaches that an excess of hydrogen sulfide is used, so that not all of the sulfur-containing compounds will react with the mercury. Miller also teaches the removal of the excess hydrogen sulfide from the reacted natural gas (flue gas) by amines and the removal of the hydrogen sulfide from the amines so that the amines may be recycled. It therefore would have been obvious to one of ordinary skill at the time of invention to recycle the excess hydrogen sulfide, which is removed from the reacted natural gas, so that it may be recirculated to further remove mercury from the natural gas.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter J Lish whose telephone number is 571-272-1354. The examiner can normally be reached on 9:00-6:00 Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



PL

STUART L. HENDRICKSON  
PRIMARY EXAMINER